



Permanent Select Committee
on Intelligence
U.S. House of Representatives

August 19, 2020

Mr. Joseph B. Maher
Principal Deputy General Counsel and Senior Official
Performing the Duties of the Under Secretary for Intelligence and Analysis
Office of Intelligence and Analysis
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Maher:

The House Permanent Select Committee on Intelligence (“Committee”) is in receipt of the Department of Homeland Security’s (“DHS” or “Department”) limited document production on August 14, 2020, in response to the Committee’s July 22 and August 3 letters. In its accompanying cover letter, the Department takes the position that it is unable to make available at this time any of the officials the Committee requested for transcribed interviews—including yourself in your current role—as part the Committee’s investigation of the Department’s Office of Intelligence and Analysis’ (“I&A”) activities in Portland and in support of the Department’s response to protests nationwide.

The position of the Department and I&A—as an element of the Intelligence Community—is untenable. It is contrary to I&A’s legal obligation to keep the congressional intelligence committees fully and currently informed of its intelligence activities, including upon specific request as the Committee has done here.¹ The fact of a concurrent investigation by an inspector general, or an ongoing process by the Department to review and produce documents to the Committee, cannot serve as a justification to delay, sidestep, or foreclose in any way full and timely cooperation by I&A with its oversight committee, particularly on a matter of such grave

¹ 50 U.S.C. § 3092 (“[T]he heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, [...] and (2) furnish the congressional intelligence committees any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted), [...] which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.)

national importance—protecting the civil liberties of Americans exercising their First Amendment rights.²

Moreover, such blanket noncooperation on witness interviews contradicts the August 4, 2020 testimony of Mr. Kenneth Cuccinelli, who committed before the Senate Judiciary Subcommittee on the Constitution that DHS would “absolutely” cooperate with our Committee’s investigation.³

Therefore, with regard to the Committee’s interview requests, the Committee expects, as an initial step towards full cooperation, that the following officials participate in transcribed interviews on the specific dates outlined below:

1. Associate General Counsel for Intelligence on **Monday, August 31, 2020** at 10:00 a.m.
2. Director of the Field Operations Division (FOD) on **Thursday, September 3, 2020** at 10:00 a.m.
3. Regional Intelligence Officer (IO), Director, or other I&A official principally responsible for I&A activities with respect to DHS operations in Portland on **Tuesday, September 8, 2020** at 10:00 a.m.
4. Director of Homeland Identities, Targeting, & Exploitation Center (HITEC) on **Thursday, September 10, 2020** at 10:00 a.m.

The Committee plans to schedule the remaining interviews in short order. If the Department continues to maintain that it will not make these officials available for transcribed interviews, the Committee will have no choice but to issue individual subpoenas to each official to compel their separate testimony by deposition, consistent with the rules and regulations of the House of Representatives and the Committee.

With regard to the Committee’s request for documents, the Committee welcomes the Department and I&A’s initial, albeit limited, production. The Committee has reviewed the

² Executive Branch agencies and departments have consistently cooperated—voluntarily or pursuant to compulsory process—with Congressional oversight and investigations that have proceeded concurrent with investigations by inspectors general or other federal entities, including criminal investigations by federal law enforcement and special or independent counsels. DHS, in particular, previously produced documents and/or had officials testify—voluntarily or under subpoena—while inspector general investigations were ongoing (e.g., among others, the Coast Guard’s handling of bullying, harassment, and retaliation, which the House Committee on Oversight and Reform and DHS’s Office of Inspector General (OIG) investigated concurrently during the 116th Congress; DHS’s Freedom of Information Act (FOIA) process, about which the Committee on Oversight and Reform and DHS OIG issued parallel reports on March 30, 2011; and the Federal Emergency Management Agency’s (FEMA) response to Hurricane Katrina, which a House Select Committee and DHS OIG investigated concurrently and issued separate reports in February and March 2006, respectively).

³ Testimony of Ken Cuccinelli, Senate Judiciary Subcommittee on the Constitution, August 4, 2020, available at: <https://www.judiciary.senate.gov/meetings/the-right-of-the-people-peaceably-to-assemble-protecting-speech-by-stopping-anarchist-violence>. (Senator Blumenthal: “Well, the House Intelligence Committee evidently has begun an investigation into a number of these issues, specifically the collection and surveillance issues that we’ve discussed. Will you commit to cooperating with that investigation?” Mr. Cuccinelli: “Yes, absolutely, Senator.”)

production closely, however, and notes that it is severely incomplete and does not respond to the majority of the Committee's specific requests.

The Committee requested on July 22 and August 3, 2020, among other records, "all documents, communications, or other materials" regarding DHS's intelligence activities in connection with Executive Order 13933, including "all ... intelligence products, intelligence reports or other intelligence information" collected or generated regarding the Executive Order "and deployment of DHS officers to Portland and other areas." We also requested "all e-mails, memoranda, or other communications or documents" between the Department and the Department of Justice or the White House related to the Executive Order and the intelligence information supporting former Acting Undersecretary Brian Murphy's email of July 25, 2020, in which he directed that I&A's intelligence products describe "violent opportunists" as "violent ANTIFA anarchists inspired." Furthermore, we requested policies and guidance "related to custodial debriefings," including those related to I&A's activities in Portland.

These requests were purposeful and specific, in part because the Committee has reason to be concerned that I&A personnel deployed to Portland, or involved in matters related to protests in the city or elsewhere, may have been engaged in intelligence collection and reporting activity of unclear propriety and legality, including possible involvement in debriefings of individuals detained by DHS personnel.

Of the 139 pages produced, DHS and I&A previously produced a majority of the documents to the Committee or are publicly available. DHS produced no information regarding intelligence requirements, essential elements of information, or standing information needs that guided I&A intelligence activities in Portland and in support of DHS' response to protests nationwide; no internal DHS or I&A correspondence, including communications with the Department of Justice or the White House; and none – or almost none – of the intelligence that presumably underly Mr. Murphy's July 25 email.⁴ Furthermore, of the policies that DHS did produce, some could apply to I&A participation in custodial debriefings or potential exploitation of electronic devices, but the policies produced are of general applicability, and not designed to cover such activities specifically. Moreover, the policies provided do not contain sufficient detail to demonstrate how—if at all—I&A ensured that its personnel produced the intelligence reports and finished intelligence products in question consistent with Intelligence Community standards, especially those applicable to analytic tradecraft and integrity. Additionally, among the finished intelligence products that I&A previously claimed that it made available to the Committee, three items marked "INTERNAL ONLY" remain outstanding, despite our

⁴ The Department produced four finished intelligence products regarding violence in Portland (two produced by I&A and previously provided on July 23, 2020; and two produced by Customs and Border Protection, which the Department had not previously produced. The Department produced no Field Intelligence Reports ("FIRs"), Intelligence Information Reports ("IIRs"), Open Source Intelligence Reports ("OSIRs"), or 'baseball cards.' The Committee therefore assumes that much of the material underlying Mr. Murphy's email has not been produced; if DHS has produced the sum total of the material Mr. Murphy referred to, then Mr. Murphy's email would be a shocking misrepresentation of the state of the underlying intelligence.

subsequent requests via e-mail and the July 22 and August 3 letters.⁵ I&A should immediately provide the missing products.

In light of this initial production, and the Department's representation in its August 14 letter that it is "endeavoring to produce documentation that is responsive to [the Committee's] request," the Committee is prepared to work with the Department and I&A to receive the remaining documents. The Committee is open to arranging a schedule of productions, as offered in the July 22 and August 3 letters, beginning with a substantial production no later than **Wednesday, August 26** of (1) the requested raw intelligence reports—Field Intelligence Reports ("FIRs"), Intelligence Information Reports ("IIRs"), Open Source Intelligence Reports ("OSIRs"), and "baseball cards"⁶ — and (2) the intelligence requirements, essential elements of information, or standing information needs related to the deployment of Department officers to Portland. Such an arrangement would obviate the need for the Committee to seek compulsory process to ensure compliance with the Committee's document requests.

Finally, the Committee welcomes the Department's recent corrective steps.

As noted in its August 14 cover letter, the Department, as of July 30, 2020, has discontinued collecting information involving members of the press and has initiated a review of the policy and procedures associated with such improper collection.

Also, on August 14, you shared with I&A's workforce a memorandum that formally rescinds the legal guidance—known as a "job aid"—that I&A prepared in early July to clarify its "expanded" intelligence collection and reporting authority related to monuments, memorials, and statues. The memorandum nonetheless insists that there is "more than one view regarding I&A's authorities in this area," even as you explain that I&A is now adopting a narrower interpretation of I&A's legal authority to collect and disseminate intelligence regarding "threats to damage, destroy, or impede Federal Government Facilities, including National Monuments and Icons." The fact that I&A adopted such a flawed legal analysis in the first place and its inability to fully repudiate such overreach is disappointing. The Committee is exploring legislative options to clarify I&A's authorities and mission and institute necessary guardrails moving forward. The Committee is prepared to work collaboratively with I&A on these reforms.

As you begin leading the men and women of I&A and chart a path forward to restore trust and confidence in I&A's mission and activities, the Committee hopes and expects that you will fulfill your legal obligation towards the Committee to ensure prompt and full compliance.

Committee staff are prepared to finalize with your team arrangements for the requested transcribed interviews and coordinate to receive all outstanding documents, as outlined above.

⁵ The finished intelligence products in question are: (1) (U//LES) INTERNAL ONLY: Violent Incidents Rarely Attributable to Domestic Terrorists, but Investigations Could Yield Additional Insights; 4 June 2020; (2) (U//FOUO) INTERNAL ONLY: Violent Opportunists Increasingly Employing Vehicle-Ramming Tactics; 4 June 2020; and (3) (U//LES) INTERNAL ONLY: Timeline: Shooting Death of Federal Protective Service Officer in Oakland, CA; 15 June 2020.

⁶ The Committee expects that all raw intelligence reports be produced directly to the Committee, rather than made available for *in camera* or other indirect means of review. The Committee can work with I&A to devise secure receipt and handling protocols.

Sincerely,



Adam B. Schiff
Chairman

cc: The Honorable Devin Nunes
Ranking Member